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CC Docket No. 92-105

	Paragraph
I. INTRODUCTION	1
II. BACKGROUND	5
A. Pipeline Safety Initiatives.....	5
B. North American Numbering Council Recommendation	8
C. Notice of Proposed Rulemaking.....	9
III. DISCUSSION	10
A. Abbreviated Dialing Arrangements.....	10
1. Designation of 811 as a National Abbreviated Dialing Code	10
2. Other Abbreviated Dialing Arrangements Considered in the <i>Notice</i>	15
a. Rejection of 344 as the Abbreviated Dialing Code for One Call Notification.....	15
b. Rejection of Codes Using a Leading Star or Number Sign for One Call Notification.....	18
B. Implementation Issues	24
1. Integration of Existing One Call Center Numbers.....	24
2. Originating Switch Location.....	27
3. Implementation Period.....	30
IV. PROCEDURAL MATTERS	36
A. Regulatory Flexibility Analysis.....	36
B. Paperwork Reduction Act Analysis.....	37
C. Further Information	38
V. ORDERING CLAUSES	40

V. ORDERING CLAUSES40

APPENDIX A – LIST OF PARTIES

APPENDIX B – FINAL REGULATORY FLEXIBILITY ANALYSIS

I. INTRODUCTION

1. In this Order, we designate 811 as the national abbreviated dialing code to be used by state One Call notification systems for providing advanced notice of excavation activities to underground facility operators in compliance with the Pipeline Safety Improvement Act of 2002 (the “Pipeline Safety Act”).¹ This Order implements the Pipeline Safety Act, which provides for the establishment of a nationwide toll-free abbreviated dialing arrangement to be used by state One Call notification systems.²

2. A One Call notification system is a communication system established by operators of underground facilities and/or state governments in order to provide a means for excavators and the general public to notify facility operators in advance of their intent to engage in excavation activities. We also address various implementation issues. Specifically, we:

- require One Call Centers to notify carriers of the toll-free or local number the One Call Center uses in order to ensure that callers do not incur toll charges, as mandated by the statute;³
- allow carriers to use either the Numbering Plan Area (NPA)-NXX or the originating switch to determine the appropriate One Call Center to which a call should be routed;⁴
- require the use of 811 as the national abbreviated dialing code for providing advanced notice of excavation activities to underground facility operators within two years after publication of this Order in the Federal Register;⁵ and
- delegate authority to the states, pursuant to section 251(e), to address the technical and operational issues associated with the implementation of the 811 code.⁶

3. Adopting a national abbreviated dialing code for this purpose will enhance public safety, and strengthen homeland security by streamlining the advance notification of excavation activities. The measures adopted in this Order will reduce disruptions to underground facilities during excavation.

¹Pipeline Safety Improvement Act of 2002, Pub. L. No. 107-355, § 17, 116 Stat. 2985, 3008 (2002) (the “Pipeline Safety Act”).

²*Id.*

³*See infra* para. 26. While the function of One Call Centers can vary from state to state, the centers exist to permit anyone who will excavate using mechanized equipment to make one telephone call to give notice of their plans to dig in a specific area before they begin their project. The state’s One Call Center then acts as a clearinghouse to inform the owners and operators of underground facilities in the area identified and allows them to mark their facilities to prevent costly and disruptive damage to underground infrastructure. One Call Centers, which cover different geographic areas, are generally accessed by dialing a toll-free or local telephone number.

⁴*See infra* para. 29.

⁵*See infra* paras. 32-34.

⁶*See infra* para. 35; 47 U.S.C. § 251(e)(1).

Designation of 811 as the abbreviated dialing code for providing advanced notice of excavation activities to underground facility operators will eliminate the need for each state One Call notification system to utilize different numbers, and therefore increase the public awareness and use of One Call services. Nationwide use of 811 will serve the public interest by minimizing confusion over which number to call before engaging in excavation activities.

4. The 811 abbreviated dialing code shall be deployed ubiquitously by carriers throughout the United States for use by all telecommunications carriers, including wireline, wireless, and payphone service providers that provide access to state One Call Centers. This designation shall be effective thirty days after publication of this Order in the Federal Register.

II. BACKGROUND

A. Pipeline Safety Initiatives

5. In 1998, pursuant to the Transportation Equity Act for the 21st Century, the United States Department of Transportation (DOT) established the One Call notification program to enhance public safety, protect the environment, minimize risks to excavators, and prevent disruption of the nation's vital underground public services by reducing the occurrence of damage to these underground facilities during excavation.⁷ States and localities have used, as part of the One Call system, numbers that contractors or property owners call to access the local One Call Center to notify the center of their intent to excavate.⁸ Upon receipt of such notice, the One Call Center transmits this information to the underground facility operators that participate in the One Call program in that area.⁹ The facility operators that have underground facilities in the area of the proposed excavation site then arrange for the identification and marking of their facilities.¹⁰

6. On December 17, 2002, President Bush signed the Pipeline Safety Act into law.¹¹ The Act, among other things, is designed to strengthen the federal government's support for the One Call program by requiring the DOT, in consultation with the Commission, to "provide for the establishment of a 3-digit nationwide toll-free telephone number system to be used by State one-call notification systems."¹²

⁷Transportation Equity Act for the 21st Century, Pub. L. No. 105-178, § 6105, 112 Stat. 107 (1998). Under this program, grants are made to states to establish or improve One Call notification systems. *Id.* at § 6105(c). See generally *Petition for Rulemaking of the United States Department of Transportation for the Allocation of a Three-Digit Telephone Number to Access Excavation Damage Prevention (One Call) Services Nationwide*, CC Docket No. 92-105, Petition for Rulemaking, at 2-6 (filed Aug. 28, 2003) ("DOT Petition").

⁸These numbers, as well as a national referral number that callers dial to locate the appropriate One Call number for their local area, are generally toll-free.

⁹DOT Petition at 8. There are seventy One Call Centers in the United States. *Id.* at 4, n.5. Their areas of geographic coverage and telephone numbers are available online at www.digsafely.com/contactlist.htm. *Id.*

¹⁰DOT Petition at 8.

¹¹Pipeline Safety Act, Pub. L. No. 107-355, 116 Stat. 2985.

¹²Pipeline Safety Act § 17. Although a "three-digit" nationwide toll-free number does not exist within the North American Numbering Plan (NANP), we are interpreting the statute to require an abbreviated dialing code to give the Pipeline Safety Act its intended effect. See *Use of N11 Codes and Other Abbreviated Dialing Arrangements*, Third Report and Order and Order on Reconsideration, CC Docket No. 92-105, 15 FCC Rcd 16753, 16755, para. 1 (2000) ("N11 Third Report and Order"). The NANP numbers are ten digits in length, and they are in the format NXX-NXX-XXXX, where N is any digit 2-9 and X is any digit 0-9. The first three digits are referred to either as NPAs or area codes. The second three digits are called central office codes. The central office code is used for (continued....)

7. To initiate implementation of the Pipeline Safety Act, the DOT filed a Petition for Rulemaking ("Petition") with the Commission on August 28, 2003, requesting the assignment of a three-digit toll-free telephone number to access One Call centers throughout the country.¹³ In its Petition, the DOT specifically requested that the digits "344" (which corresponds to the word "DIG" on telephone keypads/dials) be established as an abbreviated dialing arrangement for this purpose.¹⁴ Alternatively, the DOT requested a substitute mnemonic three-digit number.¹⁵ Subsequently, the DOT indicated that it supports the North American Numbering Council (NANC)'s recommendation to use an N11 code, specifically 811, for access to state One Call Centers.¹⁶

B. North American Numbering Council Recommendation

8. In January 2003, the NANC formed the Abbreviated Dialing for One Call Notification Issue Management Group (DIG IMG) to identify and analyze the impact of employing the various abbreviated dialing arrangements to implement the Pipeline Safety Act.¹⁷ The DIG IMG considered three possible alternatives for a three-digit code to access One Call Centers -- N11 codes, codes using a leading star or number sign, and easily recognizable codes.¹⁸ The DIG IMG provided these recommendations to the NANC on October 29, 2003.¹⁹ Upon reviewing the report, the NANC concluded that the best solution, within the framework of the existing statute, would be to assign an N11 code, specifically 811, to access One Call Centers.²⁰ The NANC noted that "absent the statutory requirement for a three-digit code, many of [its] members would have recommended use of a single ten-digit toll-free number to implement uniform access to individual state One Call Centers."²¹

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routing and rating calls. The final four digits are called the line number. NANP numbers typically are dialed on a seven-digit (without the area code) or ten-digit basis. When an abbreviated dialing code, such as 811, is used, the abbreviated dialing code is translated into a ten-digit number.

¹³DOT Petition at 2, 15.

¹⁴*Id.*

¹⁵*Id.* at n.1, 15.

¹⁶*See* DOT Reply at 1-2.

¹⁷*See* Letter to William Maher, Chief, Wireline Competition Bureau, from Robert C. Atkinson, Chair, North American Numbering Council, dated December 4, 2003, at 1 ("NANC Recommendation") (adopting the Report and Recommendation of the Abbreviated Dialing for One Call Notification Issue Management Group, dated October 29, 2003 ("DIG IMG Report")). The NANC is the Commission's federal advisory committee on numbering issues. The Communications Act of 1934, as amended by the 1996 Act, gave the Commission plenary jurisdiction over the NANP within the United States. 47 U.S.C. § 251(e)(1). In general, however, the Commission has worked cooperatively with the NANC, state commissions, and industry to manage numbering resources.

¹⁸*See* DIG IMG Report.

¹⁹*See id.*

²⁰NANC Recommendation at 1-2; Letter to William Maher, Chief, Wireline Competition Bureau, from Robert C. Atkinson, Chair, North American Numbering Council, dated May 27, 2004 ("NANC Letter"). The NANC indicated, however, that its preferred solution would be for Congress to amend the statute to provide for the establishment of a toll-free number rather than an abbreviated dialing code to access One Call Centers. The NANC considered the three-digit codes in the alternative. *See* NANC Recommendation at 1-2; NANC Letter.

²¹NANC Recommendation at 2; NANC Letter.

C. Notice of Proposed Rulemaking

9. On May 14, 2004, the Commission released a Notice of Proposed Rulemaking (*Notice*) seeking comment on various abbreviated dialing arrangements, including those considered and recommended by the NANC, that could be used by state One Call notification systems in compliance with the Pipeline Safety Act.²² In particular, we sought comment on whether an N11 code, a code using a leading star or number sign, or another three-digit number should be assigned to comply with the Pipeline Safety Act.²³ We also sought comment on implementation issues such as the integration of existing One Call Center numbers, an appropriate implementation timeframe for each proposed abbreviated dialing arrangement, and whether we should delegate authority to the state commissions to address implementation issues.²⁴ Our objective in initiating this proceeding was to assess possible abbreviated dialing arrangements to use to access state One Call Centers, while at the same time, seeking to minimize any adverse impact on numbering resources.²⁵ In this *Order*, we address the comments filed in response to the *Notice*.²⁶

III. DISCUSSION

A. Abbreviated Dialing Arrangements

1. Designation of 811 as a National Abbreviated Dialing Code

10. *Background.* In the *Notice*, we sought comment on whether to use an N11 code for access to One Call Centers.²⁷ Specifically, we sought comment on the NANC's recommendation to assign 811 for

²²Abbreviated dialing arrangements are arrangements other than the conventional seven and ten-digit sequences that allow callers to dial fewer digits. See *supra* at n.11. *Use of N11 Codes and Other Abbreviated Dialing Arrangements*, Notice of Proposed Rulemaking, CC Docket No. 92-105, 19 FCC Rcd 9173 (2004) ("*Notice*").

²³See *Notice*, 19 FCC Rcd at 9177-81, paras. 8-22.

²⁴*Id.* at 9181-83, paras. 23-37.

²⁵*Id.* at 9174, para. 1.

²⁶We received twenty-nine comments and three reply comments in response to the *Notice*. Appendix A provides the full and abbreviated names of the parties. See Appendix A.

²⁷*Notice*, 19 FCC Rcd at 9177-78, paras. 9-10. N11 codes are service codes that enable callers to access special services by dialing only three digits. Thus, the network must be pre-programmed to translate the three-digit code into the appropriate seven or ten-digit dialing sequence and route the call accordingly. Because there are eight possible N11 codes (211, 311, 411, 511, 611, 711, 811, 911), N11 codes are among the scarcest of numbering resources under the Commission's jurisdiction. To date, the Commission has assigned five N11 codes (211, 311, 511, 711, and 911). See *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, First Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5572 (1997) (*N11 First Report and Order*) (assigned 311 for non-emergency police and other governmental services); *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, Second Report and Order, 15 FCC Rcd 15188 (2000) (assigned 711 for telephone relay services for the hearing impaired); *N11 Third Report and Order*, 15 FCC Rcd at 16753 (assigned 211 for information and referral services and 511 for travel and information services); *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, Fourth Report and Order and Third Notice of Proposed Rulemaking, 15 FCC Rcd 17079 (2000) (assigned 911 as the national emergency number). In addition, 411, 611 and 811 are widely used by carriers, but have not been assigned by the Commission for nationwide use. See www.nanpa.com.

this purpose.²⁸ We also asked commenters to address whether we should incorporate the One Call access service into an existing N11 code, such as 311 or 511, to preserve the remaining unassigned N11 codes.²⁹ The NANC expressed concern that shared use could cause caller confusion, misrouted calls, and deployment delay.³⁰ We requested commenters that advocated shared use of an existing N11 code to propose solutions to mitigate the concerns expressed by the NANC.³¹

11. The majority of commenters agree with the NANC's recommendation that the best solution, within the framework of the existing statute, would be to assign an N11 code, specifically 811, for access to One Call Centers.³² These commenters assert that 811 will have little impact on customer dialing patterns and is less costly to implement compared to the other alternatives.³³ Certain commenters also specifically opposed the shared use of an existing N11 code.³⁴ They assert that shared use of an existing N11 code could discourage consumers from calling the One Call Center and cause caller confusion, thus, reducing the effectiveness of the centers.³⁵

12. *Discussion.* In this Order, we conclude that an N11 code is the best solution, within the framework of the statute, for access to One Call Centers. Thus, consistent with the statutory mandate, we designate 811 as the national abbreviated dialing code to be used by state One Call notification systems for providing advanced notice of excavation activities to underground facility operators in compliance with the Pipeline Safety Improvement Act.³⁶ In so doing, we reject the other options considered by the NANC and posed in the *Notice*.³⁷ We agree with commenters that other alternatives - codes using a leading star or number sign, e.g. *344 or #344 and an Easily Recognizable Code (ERC), such as 344 - are impractical, costly to implement, and could delay the availability of a national One Call number for

²⁸*Id.* As noted above, the NANC indicated, however, that its preferred solution would be for Congress to amend the statute to provide for the establishment of a toll-free number rather than an abbreviated dialing code to access One Call Centers. The NANC considered the three-digit codes in the alternative. *See supra* n.20.

²⁹*Notice*, 19 FCC Rcd at 9178, para. 10.

³⁰DIG IMG Report at 16.

³¹*Notice*, 19 FCC Rcd at 9178, para. 10.

³²*See* AGA Comments at 2; AOPL at 1; BellSouth Comments at 6; Cingular Comments at 4-6; CTIA Comments at 1-3; MCI Comments at 1-3; Qwest Comments at 2-3; SBC Comments at 1-2; Sunoco Comments at 1; Verizon Comments at 3; SBC Reply at 1-2; DOT Reply at 1-2 (changing its position to support the use of an N11 code, specifically 811, rather than 344 ("DIG")). *But see* APCC at 1-3 (requesting that payphone service providers be excluded from the mandate to assign a three-digit code to the One Call notification system.); CPUC Comments at 2-4; City Comments at 2-6.

³³*See* AGA Comments at 2; AOPL at 1; BellSouth Comments at 6; Cingular Comments at 4-6; CTIA Comments at 1-3; MCI Comments at 1-3; Qwest Comments at 2-3; SBC Comments at 1-2; Sunoco Comments at 1; Verizon Comments at 3; SBC Reply at 1-2.

³⁴*See* AOPL at 2; Cingular Comments at 6; City Comments at 2; CGA Comments at 2; NGA Comments at 2. *But see* CPUC at 5-6 (recommending use of the 311 code as an alternative to 811); DOT Reply at 3.

³⁵*See generally* AOPL at 2; Cingular Comments at 6; City Comments at 2; CGA Comments at 2; NGA Comments at 2; Sunoco Comments at 2.

³⁶*See* Pipeline Safety Act § 17.

³⁷*See* DIG IMG Report; *Notice*, 19 FCC Rcd 9173. We also conclude that a ten-digit toll-free number does not comply with the Pipeline Safety Act's mandate to use a "three-digit" telephone number. *See* Pipeline Safety Act § 17.

years.³⁸ Moreover, dialing arrangements in the format of *XXX or #XXX, in as much as these codes include three digits following the leading star or number sign, do not comply with the statute's requirement to utilize a nationwide "three-digit number" to access One Call Centers.³⁹ We believe that 811 will have less impact on customer dialing patterns and can be implemented without the substantial cost and delay of switch development required with the other proposed alternatives.⁴⁰ We also agree with the DOT that the special nature of an N11 code makes the 811 code amenable to a public education campaign linking it to One Call Centers.⁴¹ We reject APCC's request to exempt payphone service providers from this requirement.⁴² In contrast to the Act's clear mandate of a *nationwide* toll-free three-digit code for access to One Call Centers, APCC provides no credible argument for an exemption.⁴³ The Act does not provide any exemptions from this requirement, and we decline to do so here.⁴⁴

13. Although we recognize that using 811 depletes the quantity of remaining N11 codes assignable for other purposes, using an N11 code to access One Call Centers will consume fewer numbering resources than certain other alternative abbreviated dialing arrangements.⁴⁵ Additionally, the use of an N11 code to access One Call services follows the existing conventions for abbreviated dialing already familiar to customers.⁴⁶ The N11 architecture is an established abbreviated dialing plan that is recognized by switch manufacturers and the public at large.⁴⁷ Most significantly, using an N11 code such as 811 satisfies the legislative mandate for a three-digit nationwide number.⁴⁸

14. We share the concerns of commenters regarding the shared use of an existing N11 code, such as 511 (which is currently used for travel and information services) or 311 (which is currently used for non-emergency police and other governmental services).⁴⁹ In this instance, due to the volume of calls

³⁸See *supra* n.33. ERCs are Numbering Plan Areas (NPAs) or area codes designating special services, e.g., 888 for toll-free service. They are three digits in length. The second and third digits of an ERC are the same (e.g., 344). The NANPA has assigned certain area codes as ERCs. A list of all available and assigned Area Codes is found at www.nanpa.com. Although the 344 NPA has not yet been allocated, there are NPAs in which 344 is assigned as a central office code (NXX). DIG IMG Report at 8.

³⁹See Pipeline Safety Act § 17.

⁴⁰See *supra* n.33.

⁴¹See DOT Reply at 1-2.

⁴²See APCC Comments at 2-4.

⁴³*Id.*; Pipeline Safety Act § 17 (emphasis added).

⁴⁴See Pipeline Safety Act § 17. We agree with APCC that Section 276 of the 1996 Act does not exempt payphone calls made to One Call Centers from that statute's requirement that payphone service providers be "fairly compensated." See 47 U.S.C. § 276(b)(1). Therefore, coin calls made from a payphone to a One Call Center should be paid in accordance with that payphone's established coin rate, and coinless calls made from a payphone to a One Call Center should be compensated in accordance with the Commission's payphone compensation rules. See 47 C.F.R. §§ 64.1300 *et seq.*; see also FRFA, *infra*, at Section D.

⁴⁵See *supra* n.33.

⁴⁶*Id.*

⁴⁷*Id.*

⁴⁸See Pipeline Safety Act § 17.

⁴⁹See *supra* n.35.

received by state One Call Centers, shared use of an existing N11 code could result in customer confusion and misrouting when dialing a shared N11 code.⁵⁰ Thus, excavators could be deterred from using the notification system, thereby reducing the effectiveness of the One Call Centers.⁵¹ The Common Ground Alliance (CGA) estimates that the One Call Centers currently receive approximately 15 million calls annually.⁵² It also estimates that 40 percent of the incidents where underground facilities are damaged were caused by those who did not call before digging.⁵³ CGA contends that the incoming call volume to One Call Centers over the next few years may well exceed 20 million calls.⁵⁴ Thus, integration of state One Call Centers with existing N11 systems may also increase implementation costs while adding unnecessary complexity to the One Call notification program. Further, shared use of an existing N11 code for access to state One Call Centers could also delay deployment due to the need to reach agreement with the existing users of the N11 code to be integrated and national advertising efforts to educate users on the shared use of the N11 code. For these reasons, we reject the use of an existing N11 code as opposed to the approach adopted in this Order.

2. Other Abbreviated Dialing Arrangements Considered in the Notice

a. Rejection of 344 as the Abbreviated Dialing Code for One Call Notification

15. *Background.* In the Notice, we sought comment on the DOT's initial proposal to establish the digits "344" or any other mnemonic three-digit dialing arrangement for access to One Call Centers.⁵⁵ We tentatively concluded that because 344 corresponds to an ERC, an abbreviated dialing code in the format of an ERC or other area code would be inconsistent with our numbering resource optimization policies by potentially rendering eight million North American Numbering Plan (NANP) telephone numbers unusable.⁵⁶ We specifically sought comment on the technical and operational issues raised by the NANC and whether there are existing measures that can address these issues.⁵⁷ We also sought comment as to the extent switch development or replacement may be needed and the impact this will have on nationwide implementation.⁵⁸

16. The majority of commenters argue that the use of an ERC for access to state One Call Centers is not a viable option to comply with the statute.⁵⁹ These commenters contend that implementation of an

⁵⁰*Id.*

⁵¹*Id.*

⁵²The Common Ground Alliance is a non-profit organization formed in 1999 by DOT's Office of Research and Special Programs Administration and industry stakeholders to identify measures to protect the underground infrastructure during excavation activity, and to promote the use of industry best practices. See DOT Petition at 11-12.; see also www.commongroundalliance.com; CGA Comments at 2; AOPL at 2; Sunoco at 2.

⁵³CGA Comments at 2.

⁵⁴*Id.*

⁵⁵Notice, 19 FCC Rcd at 9180-81, paras. 18-20; DOT Petition at 2, 15. We note that, subsequently, in its reply comments filed on DOT indicated that it supports the NANC's recommendation to use an N11 code, specifically 811, for access to state One Call Centers. DOT Reply at 1-2.

⁵⁶Notice, 19 FCC Rcd at 9180, para. 18; see *supra* n.38.

⁵⁷Notice, 19 FCC Rcd at 9181, para. 19.

⁵⁸*Id.* at para. 20.

⁵⁹See BellSouth at 6-7; Bench Comments at 3-4; CPUC Comments at 6-7; Cingular at 5; Qwest Comments at 3; (continued....)

ERC would be extremely complicated and expensive because 344 is a working central office code in many area codes in the nation.⁶⁰ They also assert that using an ERC would not be in the public interest because assignment of an NPA as an abbreviated dialing code would further accelerate NANP exhaust.⁶¹

17. *Discussion.* We conclude that an abbreviated dialing code in the format of an ERC or other area code would be inconsistent with our numbering resource optimization policies by rendering approximately eight million NANP telephone numbers unusable.⁶² We agree with commenters that the selection of an ERC for this purpose would not be in the public interest because it would accelerate NANP exhaust.⁶³ Further, the establishment of 344 as an abbreviated dialing code may cause customer confusion and frustration for customers by misrouting callers to the One Call Center where 344 is a working NXX code.⁶⁴ Additionally, from a technical perspective, some switches would require either replacement or development work that could delay the capability of using the 344 code as a three-digit number for a number of years.⁶⁵ For example, Verizon comments that vendor development for the affected switches would require new technical specifications, code preparation, installation, testing, and release of generic software release prior to distribution.⁶⁶ In light of these technical and practical challenges, we do not establish 344 as the One Call abbreviated dialing code.

b. Rejection of Codes Using a Leading Star or Number Sign for One Call Notification

18. *Background.* In the *Notice*, we sought comment on whether a code with a leading star or number sign, in the format of either *XXX or #XXX, should be used to access One Call Centers.⁶⁷ We sought comment on the extent to which using a code with a leading star or number sign will either promote or discourage exhaust of the NANP numbers.⁶⁸ We asked parties to discuss any existing

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Verizon Comments at 4; Qwest Comments at 3-5; Verizon Reply at 1. *But see* AT&T at 7-9 (supports assigning 344 for One Call access rather than depleting a scarce and essential N11 resource); NUCA Comments at 1-2; City Comments at 1.

⁶⁰See BellSouth at 6-7; Bench Comments at 3-4; CPUC Comments at 6-7; Cingular at 5; Qwest Comments at 3; Verizon Comments at 4; Qwest Comments at 3-5; Verizon Reply at 1.

⁶¹*Id.*

⁶²*Notice*, 19 FCC Rcd at 9179, para. 15.

⁶³*See supra* n.60.

⁶⁴*See id.*

⁶⁵DIG IMG Report at 11.

⁶⁶Verizon Comments at 4-5.

⁶⁷*Notice*, 19 FCC Rcd at 9179-80, paras. 14-16. The leading star and number signs serve as network control characters to speed up connections. DIG IMG Report at 6. Vertical Service Codes (VSCs) are codes that use a leading star. *Id.* Specifically, VSCs are customer-dialed codes that allow customers to access features and services provided by telecommunications service providers. Services that rely on VSCs include call forwarding, automatic callback, and customer-originated trace. The number key has generally been used to stop any switch timing protocol so that the call is immediately processed and for control in telephone systems, such as voicemail. The number key is also used by Operator Services switching systems to re-originate a credit card call with the same billing information used in the proceeding call. It is also used for control in telephone systems, such as voicemail. There is no dialed equivalent to the number sign character since, unlike the star character, the number sign is not used in the dialing sequence.

⁶⁸*Notice*, 19 FCC Rcd at 9179, para. 14.

measures that can mitigate or alleviate the limitations with using a leading star or number sign.⁶⁹ We also sought comment on whether calls from wireless customers to One Call Centers should continue to be permitted because of the effort that has gone into wireless implementation of #344 (#DIG).⁷⁰

19. All commenters opposing the use of a code with a leading star or number sign cite the same reasons raised by the NANC in its report.⁷¹ Specifically, commenters and the NANC assert that using a code with a leading star or number sign for access to One Call Centers will involve considerable customer expense and may delay implementation due to the necessary switch development and reprogramming of the systems.⁷²

20. While commenters are not in favor of using a code with a leading star or number sign for access to One Call Centers, most commenters support continued use of #344 (#DIG) in the wireless sector.⁷³ They acknowledge the efforts of wireless service providers and are concerned that discontinuing the use of #344 for wireless calls will negate such efforts.⁷⁴ For example, AT&T asserts that discontinuing the use of #344 will require a re-education process for users who have been using #344 and additional expense for the participating carriers.⁷⁵ CTIA contends that #344 provides a valuable alternative for those excavators who are already familiar with #344.⁷⁶ However, DOT opposes the continued use of #344.⁷⁷ DOT argues that it is essential that a single national number is used for access to One Call Centers because it provides a nationwide identity that will provide certainty and reliability required for maximum usage and benefits.⁷⁸

21. *Discussion.* We agree with commenters that the use of a code with a leading star or number sign, in the format of either *XXX or #XXX, for access to One Call Centers would be too difficult and costly to implement.⁷⁹ Most significantly, as indicated above, such a dialing arrangement does not

⁶⁹*Id.* at 9179-80, para. 16.

⁷⁰*Id.* at 9192, para. 15. In 1999, the National Telecommunications Damage Prevention Council, concluding that there was a need for an abbreviated dialing arrangement for contacting local One Call Centers, particularly for mobile phone users, selected #344 as the abbreviated dialing arrangement. See Letter to Members of the Abbreviated Dialing for One-Call Notification Issue Management Group from Michael D. McCrary, Chair, NTDP, dated July 18, 2003 (NTDPC Letter). See www.ntdpc.com. Since that time, some wireless carriers have begun implementation of #344.

⁷¹See AOPL at 1; BellSouth at 7-8; Bench Comments at 3; Cingular Comments at 6-7; CPUC Comments at 5; CTIA Comments at 2-3; Gainey Comments at 1; Peterson Comments at 1; Qwest Comments at 5-6; Sunoco Comments at 1; DIG IMG Report at 6-8.

⁷²See *id.*

⁷³See AOPL at 1; BellSouth at 7-8; Cingular Comments at 6-7; CTIA Comments at 2-3; Gainey Comments at 1; Peterson Comments at 1; Sunoco Comments at 1; see also AT&T at 7-8. But see DOT Reply at 3.

⁷⁴See generally AOPL at 1; BellSouth at 7-8; Cingular Comments at 6-7; CTIA Comments at 2-3; Gainey Comments at 1; Peterson Comments at 1; Sunoco Comments at 1; see also AT&T at 7-8.

⁷⁵AT&T Comments at 7-8.

⁷⁶CTIA Comments at 2-3.

⁷⁷DOT Reply at 3.

⁷⁸*Id.*

⁷⁹See *supra* n.71.

comply with the statute's requirement to utilize a nationwide "three-digit number" to access One Call Centers.⁸⁰ Moreover, this abbreviated dialing arrangement would not achieve the uniformity mandated by the Pipeline Safety Act since all users would not be dialing the same sequence if the code selected includes a star or number sign.⁸¹ A single nationwide abbreviated dialing code for access to One Call Centers will provide the certainty and reliability required for maximum usage and benefits of One Call services.⁸² Additionally, many telephone systems use the star and number signs for feature access.⁸³ Thus, reprogramming these systems may not always be feasible and will involve considerable customer expense.⁸⁴ Further, some switching systems may not be capable of processing access codes using a leading star or number sign in the dialing sequences; and the necessary switch development would delay the full implementation of the One Call functionality.⁸⁵ Based on the record before us, we conclude that *XXX and #XXX are impractical for use as the national One Call access code and we will not assign a code using a leading star or number sign for access to One Call Centers.

22. Although we recognize the efforts undertaken in the implementation of #344 by some wireless carriers, we disagree with those commenters who advocate the continued and indefinite use of #344 for access to One Call Centers.⁸⁶ We agree with DOT that a single nationwide abbreviated dialing code for access to One Call Centers will provide the certainty and reliability required for maximum usage and benefits of One Call services as intended by Congress.⁸⁷ As discussed above, the #344 abbreviated dialing arrangement does not comply with the statute's requirement to utilize a nationwide "three-digit number" to access One Call Centers and the statutory mandate that dialing be uniform across the nation.⁸⁸ The use of different abbreviated dialing codes for access to state One Call Centers, even if such codes are made available in addition to 811, likely will result in customer confusion as the public use both wireless and wireline telephones.⁸⁹ Wireless carriers that currently use #344 shall transition to 811 pursuant to the implementation requirements discussed below.

23. We also reject CTIA's claim that we lack the authority to prohibit wireless carriers from continuing to use #344 as an alternative to 811.⁹⁰ As indicated above, the Communications Act of 1934, as amended by the 1996 Act, gave the Commission exclusive jurisdiction over the NANP within the United States.⁹¹ This jurisdiction over the NANP extends to administration of the NANP to ensure that numbering resources of the NANP are administered in a fair and efficient manner. The establishment of

⁸⁰ See *infra* para. 12; Pipeline Safety Act § 17.

⁸¹ See *supra* n.71; DIG IMG Report at 7-8.

⁸² See *id.*

⁸³ DIG IMG Report at 8.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ See *supra* n.73.

⁸⁷ See DOT Reply at 3.

⁸⁸ See Pipeline Safety Act § 17.

⁸⁹ See DOT Reply at 3.

⁹⁰ See CTIA *Ex Parte* at 2.

⁹¹ See *supra* n.17; 47 U.S.C. § 251(e).

all dialing patterns is included as part of numbering administration over the NANP.⁹² Thus, the Commission has the authority to prohibit the continued use of #344.⁹³

B. Implementation Issues

1. Integration of Existing One Call Center Numbers

24. *Background.* The Pipeline Safety Act expressly mandates use of a three-digit *toll-free* number to access State One Call Centers.⁹⁴ In the *Notice*, we sought comment on methods to ensure that calls to One Call Centers are toll-free.⁹⁵ We specifically sought comment on the NANC's recommendation that each One Call Center provide a toll-free number, which can be an 8YY number or any number that is not an IntraLATA toll call from the area to be served, so that callers do not incur toll charges.⁹⁶ We also sought comment on whether the dialing sequence should be the same for all providers or whether existing abbreviated dialing sequences should be allowed to continue.⁹⁷

25. All commenters that filed comments on this issue support the integration of an abbreviated dialing arrangement into an existing One Call Center toll-free or local number.⁹⁸ They assert that this will not only save time and money invested in advertising the existing One Call Center numbers but will also ensure that such calls are toll-free.⁹⁹

26. *Discussion.* To ensure that calls to One Call Centers are toll-free, we conclude that One Call Centers shall provide to carriers its toll-free number, which can be an 8YY number, or any number that is not an IntraLATA¹⁰⁰ toll call, from the area to be served for use in implementing 811.¹⁰¹ Thus, when a caller dials 811, the carriers will translate 811 into the appropriate number to reach the One Call Center. This requirement will both simplify call routing and ensure that callers do not incur toll charges, as mandated by the statute.¹⁰² As discussed above, other existing abbreviated dialing sequences shall be discontinued, because the use of other existing abbreviated dialing sequences in addition to 811 does not

⁹²See also *People of the State of New York & Public Service Commission of the State of New York v. Federal Communications Commission*, 267 F.3d 91, 104-106 (2d Cir. 2001) (holding that the Federal Communications Commission had jurisdiction to promulgate a rule pertaining to local telephone dialing patterns for the City of New York under the Communications Act of 1934).

⁹³See *id.*; 47 U.S.C. § 251(e).

⁹⁴Pipeline Safety Act § 17 (emphasis added).

⁹⁵*Notice*, 19 FCC Rcd at 9181-82, para. 21.

⁹⁶*Id.*; DIG IMG Report at 10.

⁹⁷*Notice*, 19 FCC Rcd at 9181-82, para. 21. For example, currently, wireless customers may dial 611 or *611 for repair while wireline users may dial 611 for customer service.

⁹⁸AGA Comments at 2; NGA Comments at 2; CTIA Comments at 4; SBC Reply at 3-4.

⁹⁹See AGA Comments at 2; see also NGA Comments at 2; CTIA Comments at 4; SBC Reply at 3-4.

¹⁰⁰IntraLATA refers to telecommunications services that originate and terminate in the same Local Access and Transport Area (LATA).

¹⁰¹See DIG IMG Report 10; AGA Comments at 2; NGA Comments at 2; CTIA Comments at 4; SBC Reply at 3-4.

¹⁰²See Pipeline Safety Act § 17.

comply with the statutory mandate that dialing be uniform across the nation.¹⁰³

2. Originating Switch Location

27. *Background.* In establishing a framework for its evaluation of various abbreviated dialing arrangements to implement the Pipeline Safety Act, the NANC proposed that for wireline-originated calls, the originating NPA-NXX would determine the One Call Center to which the call is sent.¹⁰⁴ For wireless-originated calls, the NANC proposed that the originating Mobile Switch Center would determine the One Call Center to which the call is sent.¹⁰⁵ In the *Notice*, we sought comment on these proposals.¹⁰⁶

28. All commenters that filed comments on this issue support the NANC's recommendation to allow carriers to use either the NPA-NXX or the originating switch to determine the appropriate One Call Center to which a call should be routed.¹⁰⁷ They contend that providing carriers flexibility to select which method best suits their needs will help to ensure that calls will be routed to the appropriate One Call Center.¹⁰⁸

29. *Discussion.* We direct carriers to use either the NPA-NXX or the originating switch to determine the appropriate One Call Center to which a call should be routed. For wireline-originated calls, the originating switch location or the NPA-NXX will determine the One Call Center to which the call is sent.¹⁰⁹ For wireless-originated calls, the originating Mobile Switch Center will determine the One Call Center to which the call is sent.¹¹⁰ This approach allows all carriers the flexibility to utilize the most efficient and cost-effective method for routing calls to appropriate state One Call Center and is competitively neutral.

3. Implementation Period

30. *Background.* In the *Notice*, we sought comment on several issues relating to how much time carriers should be given to implement a new national abbreviated dialing code.¹¹¹ Specifically, we sought comment on how long the implementation period for each proposed abbreviated dialing arrangement should be.¹¹² We asked parties to comment on all of the steps that carriers must undertake to prepare the network for use of the three abbreviated dialing arrangements proposed in the *Notice* to route properly

¹⁰³ See *supra*, paras. 22-23.

¹⁰⁴ DIG IMG Report at 5.

¹⁰⁵ *Id.*

¹⁰⁶ *Notice*, 19 FCC Rcd at 9182, para. 22.

¹⁰⁷ See AGA Comments at 2; BellSouth Comments at 10-11; NGA Comments at 2; CTIA Comments at 4; SBC Reply at 2-3.

¹⁰⁸ SBC Reply at 2-3; see also AGA Comments at 2; BellSouth Comments at 10-11; NGA Comments at 2; CTIA Comments at 4.

¹⁰⁹ See DIG IMG Report at 5.

¹¹⁰ *Id.*

¹¹¹ *Notice*, 19 FCC Rcd at 9182, para. 23.

¹¹² *Id.*

such calls to the One Call Centers.¹¹³ We also sought comment on what time limit should be given to carriers to vacate any existing uses, if an unassigned N11 code, such as 811, were selected to access One Call Centers.¹¹⁴ Further, we specifically sought comment on the technical and operational issues that should be considered when determining the time period for implementation that would allow carriers to prepare for use of the proposed abbreviated dialing arrangement that was adopted.¹¹⁵ We also sought comment on the NANC's recommendation that we allow carriers one to two years to prepare the network to support One Call notification to existing One Call Centers.¹¹⁶ Additionally, we sought comment on whether the period for implementation should be uniform or variable and based on local conditions and whether, pursuant to section 251(e), we should delegate authority to the states to establish the timeframe for implementation and how best to engage states in the implementation process.¹¹⁷

32. *Discussion.* With regard to how much time carriers will need to implement 811, we find that, based on the record before us, two years from publication of this Order in the Federal Register is a reasonable time period for implementing 811.¹¹⁸ Most commenters generally agree that two years is a sufficient period for implementing an N11 code, specifically 811, for access to One Call Centers.¹¹⁹ Thus, we conclude that calls to One Call Centers using an abbreviated dialing code must use 811 as the national abbreviated dialing code for providing advanced notice of excavation activities to underground facility operators on or before two years from publication of this Order in the Federal Register.¹²⁰ We defer to the expertise of the carriers, in cooperation with the individual states, to develop and determine the most appropriate technological means of implementing 811 access to One Call services, as dictated by their particular network architectures.

33. Although the Commission has allowed the local use of unassigned N11 codes, it has recognized that this use must be discontinued on short notice.¹²¹ Accordingly, we reject THG's argument to allow the continued use of 811 for commercial purposes until a qualified entity applies for and

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.* at para. 24.

¹¹⁷ *Id.* at 9183, para 25.

¹¹⁸ *See infra* n.119.

¹¹⁹ *See* AGA Comments at 3; CPUC Comments at 8; CTIA Comments at 5-6; MCI Comments at 2; SBC Reply at 2-4; Verizon Comments at 4; Verizon Reply at 1. Some commenters propose a one to three year timeframe (*See* AGA Comments at 3; Verizon Reply at 1), while others propose one or two years (*See* MCI Comments at 2; CPUC at 8; CTIA Comments at 5-6; SBC Comments at 2-4).

¹²⁰ We will not, as BellSouth suggests, delay beginning the implementation clock until there has been an official request to use the designated code for One Call access. BellSouth Comments at 9-10. The Act mandates that a nationwide toll-free three-digit code is established for access to state One Call Centers. Pipeline Safety Act § 17 (emphasis added). Thus, such requirement applies to all carriers on a nationwide basis and is not dependent upon whether there has been a request for such service. As indicated above, most commenters suggest an implementation period of no more than two years. *See supra* n.119. In the event carriers need additional time to implement 811, they should seek appropriate relief.

¹²¹ *See N11 First Report and Order*, 12 FCC Rcd at 5597, para 41.

develops the capability to put the code into use for One Call access.¹²² The record indicates that the 811 code, while not formally allocated by a Commission order, is being used in several jurisdictions for other purposes. For example, 811 is used in some areas to allow customers to make free repair calls and as a 911 test code.¹²³ Specifically, in some of its states, SBC uses 811 as a test code for 911 prior to "turning up" new 911 trunk groups.¹²⁴ SBC asserts therefore that designing a new code for testing will take some time because SBC must be able to test new 911 trunk groups to ensure they operate correctly.¹²⁵ SBC also currently uses 811 in Connecticut for its business offices.¹²⁶ Thus, in certain states, implementing the 811 solution will require time and effort.

34. APCC also notes that many independent payphone service providers currently use 811 to allow the general public to make free repair calls from payphones.¹²⁷ APCC argues that it would be costly to implement 811 because it would require payphones to be reprogrammed and a change of signage informing payphone users of the new repair code.¹²⁸ We agree with SBC that where 811 has been used by customers for other purposes, changing the use of that number will require more robust customer education.¹²⁹ Additionally, changes to phone books, methods and procedures, and systems will require significantly more time where 811 was previously used for other purposes.¹³⁰ For the foregoing reasons, we believe two years provides a reasonable transition period to clear the 811 abbreviated dialing code of any other existing uses, provide customer education, and ensure that there is no unreasonably abrupt disruption of the existing uses.

35. We recognize that states have unique knowledge that will assist in implementing the transition to the One Call Center access set forth in this Order. We therefore delegate authority to the state commissions, pursuant to section 251(e), to address the technical and operational issues associated with the implementation of 811.¹³¹ In delegating authority to the state commissions to address the technical and operational issues, state commissions should also consider whether a carrier may need additional time to implement 811 due to such technical and/or operational difficulties. We agree with MPSC that state commissions are in the best position to address issues associated with implementing the abbreviated dialing arrangement because many of the One Call Centers were developed by, or under the auspices of, the state commissions.¹³² For example, Qwest suggests that states be involved in mediating

¹²²See THG Comments at 2-4; *see also* NTCA Comments at 2-3. THG offers consulting services to communications companies and other companies that use their services. THG Comments at 1. Specifically, THG's clients are commercial entities that use N11 codes to provide information services to the public on a commercial basis. *Id.* We further address THG's concerns regarding the possible economic impact of our policies adopted herein on small entities in the Final Regulatory Flexibility Analysis (FRFA). *See* Appendix B.

¹²³See APCC Comments at 3; SBC Comments at 2-4.

¹²⁴SBC Comments at 3.

¹²⁵*Id.*

¹²⁶*Id.*

¹²⁷APCC Comments at 3.

¹²⁸*Id.*

¹²⁹See SBC Comments at 3.

¹³⁰*Id.*

¹³¹47 U.S.C. § 251(e); *see supra* n.17.

¹³²MPSC Comments at 5-6.

issues associated with customer contention in areas where multiple call centers request service in the same geographical area and be delegated authority to assess the qualifications of One Call Centers.¹³³ We agree. We defer to the expertise of the states to address and resolve such issues. However, we decline to delegate authority to the state commissions, as suggested by CPUC, to establish the implementation period.¹³⁴ We agree with SBC that the statute calls for a nationwide solution and that allowing states to establish the implementation period would not meet this mandate.¹³⁵ Therefore, as discussed above, we have established a two year period for implementing 811 as the national abbreviated dialing code for access to state One Call Centers.¹³⁶

IV. PROCEDURAL MATTERS

A. Regulatory Flexibility Analysis

36. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹³⁷ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice*.¹³⁸ The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA.¹³⁹ The Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) for this *Order*, set forth at Appendix B.

B. Paperwork Reduction Act Analysis

37. This *Order* does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small businesses with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

C. Further Information

38. Alternative formats (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 voice, (202) 418-7365 TTY, or bmillin@fcc.gov. This *Order* can also be downloaded in Microsoft Word and ASCII formats at <http://www.fcc.gov/ccb/universalservice/highcost>.

39. For further information, contact Regina Brown at (202) 418-0792 in the Telecommunications Access Policy Division, Wireline Competition Bureau.

¹³³Qwest Comments at 9.

¹³⁴See CPUC Comments at 8.

¹³⁵SBC Comments 6-7.

¹³⁶See *supra* paras. 32-34.

¹³⁷See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

¹³⁸*Notice*, 19 FCC Rcd at 9187-9202.

¹³⁹*Id.* at 9187, para. 2.

V. ORDERING CLAUSES

40. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j), 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended, this Order IS ADOPTED.

41. IT IS FURTHER ORDERED that, pursuant to section 251(e)(3) of the Communications Act of 1934, as amended, 47 U.S.C. § 251(e)(3), 811 IS ASSIGNED as the national abbreviated dialing code to be used exclusively for access to Once Call Centers, effective thirty days after publication of this Order in the Federal Register.

42. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in dark ink, appearing to read "Marlene H. Dortch", is written over a horizontal line.

Marlene H. Dortch
Secretary

APPENDIX A

**List of Parties Filing Comments in Response to
the Notice of Proposed Rulemaking****Comments**

1. American Gas Association (AGA)
2. American Petroleum Institute and the Association of Oil Pipe Lines (AOPL)
3. American Public Communications Council (APCC)
4. AT&T Corp. (AT&T)
5. BellSouth Corporation (BellSouth)
6. Bench, David H. (Bench)
7. California Public Utilities Commission and the People of the State of California (CPUC)
8. Cingular Wireless LLC (Cingular)
9. City of New York (City)
10. Common Ground Alliance (CGA)
11. Explorer Pipeline Company (Explorer)
12. Gainey, Vernon (Gainey)
13. KeySpan Energy (KeySpan)
14. MCI, Inc. (MCI)
15. Michigan Public Service Commission (MPSC)
16. National Telecommunications Cooperative Association (NTCA)
17. National Utility Contractors Association (NUCA)
18. North American Numbering Council (NANC)
19. Northeast Gas Association (NGA)
20. Peterson, Ron (Peterson)
21. Qwest Communications, Inc. (Qwest)
22. SBC Communications (SBC)
23. Sunoco Pipeline L.P. (Sunoco)
24. THG Consultants LLP (THG)
25. United States Department of Transportation (DOT)
26. Utility Notification Center of Colorado (UNCC)
27. Verizon telephone companies (Verizon)
28. Wireless Association (CTIA)
29. Wright, Stephen H. (Wright)

Reply Comments

1. SBC Communications (SBC)
2. United States Department of Transportation (DOT)
3. Verizon telephone companies (Verizon)

Ex Partes

1. Wireless Association (CTIA)
2. Verizon telephone companies (Verizon)

APPENDIX B

FINAL REGULATORY FLEXIBILITY ANALYSIS

(REPORT AND ORDER)

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (*Notice*).² The Commission sought public comments on the proposals in the *Notice*, including comment on the IRFA.³ The comments received are discussed below.⁴ This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.⁵

A. Need for, and Objectives of, the Proposed Rules

2. In this *Order*, we designate 811 as the national abbreviated dialing code to be used by state One Call notification systems for providing advanced notice of excavation activities to underground facility operators in compliance with the Pipeline Safety Improvement Act of 2002 (the "Pipeline Safety Act").⁶ This *Order* implements the Pipeline Safety Act, which provides for the establishment of a nationwide toll-free abbreviated dialing arrangement to be used by state One Call notification systems.⁷

3. A One Call notification system is a communication system established by operators of underground facilities and/or state governments in order to provide a means for excavators and the general public to notify facility operators in advance of their intent to engage in excavation activities. We also address various implementation issues. Specifically, we require One Call Centers⁸ to notify carriers of the toll-free or local number the One Call Center uses in order to ensure that callers do not incur toll charges, as mandated by the statute.⁹ We also allow carriers to use either the Numbering Plan Area (NPA) NXX or the originating switch to determine the appropriate One Call Center to which a call should be routed.¹⁰ Further, we require the use of 811 as the national abbreviated dialing code for providing

¹See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

²See *Use of N11 Codes and Other Abbreviated Dialing Arrangements*, Notice of Proposed Rulemaking, CC Docket No. 92-105, 19 FCC Rcd 9173, 9187 (2004) ("*Notice*").

³The Commission received twenty-nine comments and three reply comments in response to the *Notice*. Appendix A provides the full and abbreviated names of the parties. See Appendix A.

⁴See *Order*, *infra* para. 41.

⁵See 5 U.S.C. § 604.

⁶Pipeline Safety Act, Pub. L. No. 107-355, § 17, 116 Stat. 2985, 3008.

⁷*Id.*

⁸See *Order*, *supra* n.3.

⁹See *Order*, *supra* para. 26.

¹⁰See *Order*, *supra* para. 29.

advanced notice of excavation activities to underground facility operators within two years after publication of this *Order* in the Federal Register.¹¹ We also delegate authority to the states, pursuant to section 251(e), to address the technical and operational issues associated with the implementation of the 811 code.¹²

4. We believe that adopting a nationwide abbreviated dialing code for this purpose will enhance public safety, and strengthen homeland security by streamlining the advance notification of excavation activities. The measures adopted in this *Order* will reduce disruptions to underground facilities during excavation. Designating 811 as the abbreviated dialing code for providing advanced notice of excavation activities to underground facility operators will eliminate the need for each state One Call notification system to utilize different numbers, and therefore increase the public awareness and use of One Call services. Nationwide use of 811 will also serve the public interest by minimizing confusion over which number to call before engaging in excavation activities.

5. The 811 abbreviated dialing code shall be deployed ubiquitously by carriers throughout the United States for use by all telecommunications carriers, including wireline, wireless, and payphone service providers that provide access to state One Call Centers.¹³ The designation of 811 for access to state One Call Centers shall be effective thirty days after publication of this *Order* in the Federal Register.¹⁴

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

6. In the IRFA, we indicated that we would consider any proposals made to minimize any significant economic impact on small entities.¹⁵ We received no comments directly in response to the IRFA. However, NTCA and THG filed general comments regarding the possible impact of the implementation of an N11 code on small business entities.¹⁶ Specifically, NTCA asserted that, although implementing 811 as the abbreviated dialing code for accessing the state One Call notification system will not cause its member companies any technical hardships; it will involve some costs and difficulties due to the need to modify switches.¹⁷ While NTCA did not provide detailed information on implementation costs, NTCA contended that the burdens associated with implementation of the 811 code would have a greater impact on smaller companies with limited staffing and a smaller subscriber base.¹⁸

¹¹See *Order*, *supra* paras. 32-34.

¹²See *Order*, *supra* para. 35; 47 U.S.C. § 251(e)(1).

¹³See *Order*, *supra* para. 4.

¹⁴*Id.*

¹⁵*Notice*, 19 FCC Rcd at 9203, para. 37.

¹⁶See NTCA Comments; THG Comments.

¹⁷See NTCA Comments at 1-3. NTCA is the industry association representing rural telecommunications providers. NTCA represents more than 560 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service incumbent local exchange carriers and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended. NTCA's members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities. NTCA Comments at n.1.

¹⁸*Id.* at 2.

THG argued that if an unassigned N11 code is selected to access One Call Centers, then existing commercial uses of this code should continue for commercial purposes until a qualified entity applies for develops the capability to put the code into use for One Call access.¹⁹ THG is concerned that, where an unassigned N11 code is selected for One Call access, small businesses engaged in commercial activities may be adversely affected and the public deprived of an existing service.²⁰ The steps taken to minimize economic impact on small entities are discussed below.²¹

C. Description and Estimate of the Number of Small Entities to which the Rules Will Apply

7. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules.²² The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."²³ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.²⁴ A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).²⁵

a. Telecommunications Service Entities

(i) Wireline Carriers and Service Providers

8. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."²⁶ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.²⁷ We have therefore included small incumbent local exchange

¹⁹See *Order, infra* para. 33; THG Comments at 2-3. THG offers consulting services to communications companies and companies that use such services of such companies. THG Comments at 1. THG clients are commercial entities that have used N11 codes to provide information services to the public on a commercial basis. *Id.*

²⁰*Id.* at 4.

²¹See *infra* paras. 40-44.

²²5 U.S.C. § 603(b)(3).

²³5 U.S.C. § 601(6).

²⁴5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

²⁵15 U.S.C. § 632.

²⁶*Id.*

²⁷Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small-business concern," which the RFA incorporates (continued....)

carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

9. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁸ According to Commission data,²⁹ 1,337 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

10. *Competitive Local Exchange Carriers, Competitive Access Providers, "Shared-Tenant Service Providers," and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁰ According to Commission data,³¹ 609 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 carriers, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 35 carriers have reported that they are "Other Local Service Providers." Of the 35, an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our action.

11. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³² According to Commission data,³³ 133 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 127 have 1,500 or fewer employees and six have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our action.

12. *Toll Resellers.* The SBA has developed a small business size standard for the category of (Continued from previous page) _____ into its own definition of "small business." See 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. See 13 C.F.R. § 121.102(b).

²⁸ 13 C.F.R. § 121.201, NAICS code 517110.

²⁹ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, Page 5-5 (May 2004) (hereinafter "Trends in Telephone Service"). This source uses data that are current as of October 22, 2003.

³⁰ 13 C.F.R. § 121.201, NAICS code 517110.

³¹ "Trends in Telephone Service" at Table 5.3.

³² 13 CFR § 121.201, NAICS code 517310.

³³ "Trends in Telephone Service" at Table 5.3.

Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁴ According to Commission data,³⁵ 625 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 590 have 1,500 or fewer employees and 35 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

13. *Payphone Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁶ According to Commission data,³⁷ 761 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 757 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

14. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁸ According to Commission data,³⁹ 261 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXC's are small entities that may be affected by our action.

15. *Operator Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴⁰ According to Commission data,⁴¹ 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSP's are small entities that may be affected by our action.

16. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴² According to Commission data,⁴³ 37 carriers have

³⁴ 13 CFR § 121.201, NAICS code 517310.

³⁵ "Trends in Telephone Service" at Table 5.3.

³⁶ 13 CFR § 121.201, NAICS code 517110.

³⁷ "Trends in Telephone Service" at Table 5.3.

³⁸ 13 C.F.R. § 121.201, NAICS code 517110.

³⁹ "Trends in Telephone Service" at Table 5.3.

⁴⁰ 13 C.F.R. § 121.201, NAICS code 517110.

⁴¹ "Trends in Telephone Service" at Table 5.3.

⁴² 13 C.F.R. § 121.201, NAICS code 517310.

reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our action.

(ii) Wireless Telecommunications Service Providers

17. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging"⁴⁴ and "Cellular and Other Wireless Telecommunications."⁴⁵ Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.⁴⁶ Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.⁴⁷ Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.⁴⁸ Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.⁴⁹ Thus, under this second category and size standard, the majority of firms can, again, be considered small.

18. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category "Cellular and Other Wireless Telecommunications."⁵⁰ Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.⁵¹ Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.⁵² Thus, under this category and size standard, the great majority of firms can be considered

(Continued from previous page)

⁴³"Trends in Telephone Service" at Table 5.3.

⁴⁴13 C.F.R. § 121.201, NAICS code 513321.

⁴⁵13 C.F.R. § 121.201, NAICS code 513322.

⁴⁶U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000).

⁴⁷*Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

⁴⁸U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

⁴⁹*Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

⁵⁰13 C.F.R. § 121.201, NAICS code 513322.

⁵¹U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

⁵²*Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."